

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 346

Introduced by Senators Kehoe and Simitian

February 25, 2009

An act to add Article 13.5 (commencing with Section 25250.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as amended, Kehoe. Hazardous materials: motor vehicle brake friction materials.

(1) Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the department, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime.

This bill would require the department to conduct a baseline survey, on or before January 1, 2013, of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. The

bill would require the department, commencing on January 1, 2013, and at least every 3 years thereafter, to monitor the concentration levels of those metals in motor vehicle brake friction materials to ensure that those levels do not increase by more than 50% above the baseline levels established through the baseline survey. The bill would require the department to take specified ~~acting~~ *action* if any of those metals increased by more than ~~50%, and 50%, and~~ 50%, and would require the department to prioritize the presence of those constituents in brake friction materials for regulation, as specified.

The bill also would require the department to monitor copper. The bill would require ~~manufacturer~~ *manufacturers* of motor vehicle brake friction materials to monitor and report to the department on the reduction of copper concentration in motor vehicle brake friction material. The bill would require the department to review the reports and, within 6 months of receipt, report certain information to the Legislature.

The bill, commencing on January 1, 2014, would prohibit the sale of any motor vehicle brake friction materials containing specified constituents; in amounts that exceed certain concentrations. The bill, commencing on January 1, 2021, would restrict the concentration of copper in motor vehicle brake friction materials sold in California, as specified. The bill, commencing on January 1, 2014, would require all manufacturers of motor vehicle brake friction materials that are sold in this state to obtain a certification of compliance with these requirements from a 3rd-party testing agency, and to mark proof of certification on the friction materials. A violation of these provisions would be subject to a civil fine of up to \$10,000 per violation. Because a violation of these provisions would also be a crime pursuant to the hazardous waste control laws, the bill would impose a state-mandated local program.

The bill would require the department, commencing on January 1, 2011, to impose a fee of \$1 on each new axle friction materials set sold in the state, whether fitted to a new vehicle or sold separately, and would require the department, commencing on January 1, 2012, to adjust annually the fee by an amount necessary to compensate for inflation. If the department determines, after January 1, 2016, that the average annual revenue from the fee is less than an amount equivalent to \$13,000,000 in 2011 dollars, or more than an amount equivalent to \$16,000,000 in 2011 dollars, the bill would require the department to adjust the fee to an amount necessary to fall within that range. The bill would establish the Brake Friction Materials Water Pollution Fund in

the State Treasury, for deposit of the fee. The bill would require the fee to be used to cover specified costs related to copper and other constituents in brake friction materials, and for grants for the purpose of planning, implementing, and measuring the effectiveness of actions to improve water quality in surface waters that receive runoff containing pollutants from vehicle brake friction materials.

The bill would require the department to keep accurate books, records, and accounts of all of its dealings under the bill, and would subject those books, records, and accounts, and amounts paid into or from the fund, to an annual audit.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Friction materials are an essential component of motor
- 4 vehicle brake systems and of critical importance to transportation
- 5 safety and the public safety in general.
- 6 (b) Debris from friction materials containing copper *in all of its*
- 7 *forms, including, but not limited to, elemental copper and all of*
- 8 *its alloys and compounds*, are generated and released to the
- 9 surrounding environment in the course of normal brake system
- 10 operation.
- 11 (c) Limits on the copper content of brake friction materials are
- 12 necessary for compliance with copper water quality standards and
- 13 successful implementation of copper total maximum daily loads
- 14 in California's urban watersheds.
- 15 (d) Changes in the composition of brake friction materials made
- 16 to comply with copper water quality standards and successfully
- 17 implement copper total maximum daily loads in California's urban
- 18 watersheds should meet all applicable safety standards.

1 SEC. 2. Article 13.5 (commencing with Section 25250.50) is
2 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
3 to read:

4
5 Article 13.5. Motor Vehicle Brake Friction Materials

6
7 25250.50. For purposes of this article, the following definitions
8 apply:

9 (a) “Board” means the State Water Resources Control Board.

10 (b) “Department” means the Department of Toxic Substances
11 Control.

12 (c) “Motor Vehicle” has the same meaning as “vehicle” is
13 defined in Section 670 of the Vehicle Code.

14 (d) “Testing agency” means an agency approved by the
15 department as qualified and equipped for the testing of products,
16 materials, equipment, and installations in accordance with
17 nationally recognized standards.

18 25250.52. (a) On and after January 1, 2021, any motor vehicle
19 brake friction materials exceeding 5 percent copper by weight shall
20 not be sold in this state.

21 (b) On and after January 1, 2032, any motor vehicle brake
22 friction materials exceeding 0.5 percent copper by weight shall
23 not be sold in this state.

24 (c) Manufacturers of vehicles and vehicle brake friction
25 materials shall monitor and provide four reports to the department
26 on the reduction of the concentration level of copper in motor
27 vehicle brake friction materials. The first report shall be due on or
28 before January 1, 2016, the second report shall be due on or before
29 January 1, 2018, the third report shall be due on or before January
30 1, 2027, and the fourth report shall be due on or before January 1,
31 2029.

32 (d) The department shall review the reports received pursuant
33 to subdivision (c) and provide the Legislature with reports pursuant
34 to subdivision (e) no later than six months after receiving each
35 report required pursuant to subdivision (c).

36 (e) The reports made by the department to the Legislature shall
37 include, but not be limited to, all of the following:

38 (1) A summary of the information contained in the reports
39 received pursuant to subdivision (c).

(2) Statistics on certifications issued by third-party testing agencies for friction materials found to be in compliance with any or all of the requirements of this article pursuant to Section 25250.60.

(3) A summary of the results of the department's monitoring of copper pursuant to Section 25250.56.

25250.54. On and after January 1, 2014, any motor vehicle brake friction materials containing any of the following constituents in an amount that exceeds the following concentrations shall not be sold in this state:

(a) Cadmium and its compounds: 0.01 percent by weight.

(b) Chromium(VI)-salts: 0.1 percent by weight.

(c) Lead and its compounds: 0.1 percent by weight.

(d) Mercury and its compounds: 0.1 percent by weight.

(e) Asbestiform fibers: 0.1 percent by weight.

25250.56. (a) On or before January 1, 2013, the department shall conduct a baseline survey of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. Commencing on January 1, 2013, and at least every three years thereafter, the department shall monitor the following constituents to ensure that concentration levels of those constituents in motor vehicle brake friction materials do not increase by more than 50 percent above the baseline levels established through the baseline survey:

(1) Nickel and its compounds.

(2) Zinc and its compounds.

(3) Antimony and its compounds.

(b) In the monitoring required by subdivision (a), the department also shall monitor copper.

(c) If monitoring results for zinc show that concentration levels have increased by more than 50 percent above the baseline levels, the department shall ask the board to use published data from scientific literature to estimate the relative contribution of zinc from brake friction materials to the total quantity of zinc in urban runoff. On the basis of this estimate, the board shall determine whether there is a need for controlling the use of zinc in brake friction material.

(d) If monitoring results for nickel show that concentration levels have increased by more than 50 percent above the baseline levels, the department shall ask the board to use published data

1 from scientific literature to estimate the relative contribution of
2 nickel from brake friction materials to the total quantity of nickel
3 in urban runoff. On the basis of this estimate, the list adopted as
4 required by Section 303(d) of the federal Clean Water Act (33
5 U.S.C. Sec. 1313(d)), and available water quality monitoring data,
6 the board shall determine whether there is a need for controlling
7 the use of nickel in brake friction material.

8 (e) If monitoring results for antimony show that concentration
9 levels have increased by more than 50 percent above the baseline
10 levels, the department shall ask the Office of Environmental Health
11 Hazard Assessment to review scientific literature to determine
12 whether there is a need for controlling the use of antimony in brake
13 friction material.

14 (f) All studies and surveys conducted by the department under
15 this section shall be subject to public review and comment.

16 (g) If the department determines that the scientific studies
17 demonstrate the need for controlling the use of the studied
18 constituents in brake friction materials, the department shall
19 prioritize the presence of the studied constituents in brake friction
20 materials for regulation pursuant to Section 25252.

21 (h) Vehicle brake manufacturers shall follow an alternative
22 evaluation process, for the studied constituents in brake friction
23 materials, adopted by the department pursuant to Section 25253.

24 25250.58. The following motor vehicle classes and brakes are
25 exempt from this article:

26 (a) Military combat vehicles.

27 (b) Vehicles employing internal closed oil immersed brakes, or
28 a similar brake system that is fully contained and emits no copper,
29 other debris, or fluids under normal operating conditions.

30 (c) Brakes designed for the primary purpose of holding the
31 vehicle stationary and not designed to be used while the vehicle
32 is in motion.

33 25250.60. (a) Commencing on January 1, 2014, all
34 manufacturers of friction materials used in brakes on new motor
35 vehicles, or as replacement parts, that are sold in this state shall
36 obtain a certification of compliance with the requirements of
37 Section 25250.54 from a third-party testing agency. Proof of
38 certification shall be marked on the friction materials.

39 (b) Commencing on January 1, 2021, and until December 31,
40 2031, all manufacturers of friction materials used in brakes on new

1 motor vehicles, or as replacement parts, that are sold in this state
2 shall obtain a certification of compliance with the requirements of
3 subdivision (a) of Section 25250.52 and Section 25250.54 from a
4 third-party testing agency. Proof of certification shall be marked
5 on the friction materials.

6 (c) Commencing on January 1, 2032, all manufacturers of
7 friction materials used in brakes on new motor vehicles, or as
8 replacement parts, that are sold in this state shall obtain certification
9 of compliance with the requirements of subdivision (b) of Section
10 25250.52 and Section 25250.54 from a third-party testing agency.
11 Proof of certification shall be marked on the friction materials.

12 (d) Manufacturers of friction materials used for brakes on new
13 motor vehicles, or as replacement parts, may obtain certification
14 of compliance with the requirements of subdivision (a) or (b) of
15 Section 25250.52 or Section 25250.54 at any time.

16 (e) The department, in consultation with all interested parties,
17 and on or before January 1, 2011, shall develop all certification
18 and marking criteria required pursuant to this section.

19 (f) Commencing on January 1, 2014, vehicle manufacturers and
20 retailers of friction materials shall ensure that only brakes certified
21 for sale in this state are offered for sale in this state.

22 25250.62. (a) A violation of this article, including, but not
23 limited to, the falsification of third-party certification, by vehicle
24 manufacturers, brake friction materials manufacturers, distributors,
25 or retailers, shall be subject to a civil fine of up to ten thousand
26 dollars (\$10,000) per violation.

27 (b) The department shall enforce this article. The department
28 shall remove from sale in this state any replacement brake friction
29 materials determined to be not in compliance with this article.

30 (c) In enforcing this article, the department shall not recall
31 automobiles fitted with brake friction materials that do not comply
32 with this article, but the department may impose fines and penalties
33 authorized pursuant to subdivision (a) on automobile manufacturers
34 whose vehicles are fitted with brake friction materials that do not
35 comply with this article.

36 25250.64. (a) (1) Commencing on January 1, 2011, the
37 department shall impose a fee of one dollar (\$1) on each new axle
38 friction materials set sold in the state, whether fitted to a new
39 vehicle or sold separately.

(2) Commencing on January 1, 2012, and every year thereafter, the department shall adjust the fee on each new axle friction materials set sold in the state, whether fitted to a new vehicle or sold separately, by the amount necessary to compensate for inflation.

(3) Commencing on January 1, 2016, and every two years thereafter, the department shall calculate the average annual revenue amount raised by the fee based on the previous four years' revenues.

(4) If the department determines that the average annual revenue amount calculated pursuant to paragraph (3) is less than an amount equivalent to thirteen million dollars (\$13,000,000) in 2011 dollars, or more than an amount equivalent to sixteen million dollars (\$16,000,000) in 2011 dollars, it shall, pursuant to procedures established by regulation, adjust the fee by the amount necessary to provide revenue of at least the equivalent of thirteen million dollars (\$13,000,000) in 2011 dollars but no more than the equivalent of sixteen million dollars (\$16,000,000) in 2011 dollars.

(5) On January 1, 2040, the department shall, pursuant to procedures established by regulation, reduce the fee to the amount necessary solely to provide sufficient revenue for the implementation of this article by the department and the board pursuant to paragraph (1) of subdivision (b) of Section 25250.65.

(b) The fee shall only be used to cover costs for outreach, administration, fee collection, enforcement, monitoring, and control measures related to copper and other constituents in brake friction materials, and for making grants pursuant to Section 25250.65.

(c) Not more than 5 percent of the fees collected pursuant to this section shall be used to offset accounting costs incurred for fee collection.

(d) Funds for outreach may be allocated by the department to trade associations associated with the manufacture and sale of brake friction materials for purposes of outreach to, and education of, their memberships.

(e) The department shall consult with the board prior to allocating funds to, or implementing any provisions of this article relating to, motor vehicle brake friction materials constituent monitoring, mitigation, or control measures.

25250.65. (a) The Brake Friction Materials Water Pollution Fund is hereby established in the State Treasury. All fees collected

1 by the department pursuant to this article shall be deposited in the
2 fund.

3 (b) The moneys in the fund shall be expended, upon
4 appropriation by the Legislature in the annual Budget Act, in the
5 manner and in the order of priority as follows:

6 (1) By the department and the board for the purpose of
7 implementing this article. No more than 5 percent of the funds
8 shall be expended by the department and the board to reimburse
9 the costs of administering paragraphs (2) and (3).

10 (2) (A) By the department, 90 percent of the balance of moneys
11 remaining in the fund after moneys have been expended pursuant
12 to paragraph (1), for grants to qualified entities, on a per capita
13 basis, for the purpose of planning, implementing, and measuring
14 the effectiveness of actions to improve water quality in surface
15 waters that receive runoff containing pollutants from vehicle brake
16 friction materials.

17 (B) For purposes of subparagraph (A), “qualified entities”
18 include cities, counties, cities and counties, organizations
19 representing municipalities on a watershed basis, and organizations
20 representing copermittees in a single National Pollutant Discharge
21 Elimination System permit.

22 (C) The amount for which a city or a county is eligible shall be
23 based on the total population of the incorporated area of the city
24 or the total unincorporated area of the county, whichever is
25 applicable.

26 (3) (A) By the department, the remaining 10 percent of the
27 moneys in the fund, plus any moneys reserved for grants pursuant
28 to subparagraph (A) of paragraph (2) that have not been allocated,
29 for grants to be issued on a competitive basis for the purpose of
30 planning, implementing, and measuring the effectiveness of actions
31 on a regional or statewide basis to improve water quality in surface
32 waters that receive runoff containing pollutants from vehicle brake
33 friction materials.

34 (B) Eligible applicants for competitive grants include, but are
35 not limited to, qualified entities, as defined in subparagraph (B)
36 of paragraph (2), and nonprofit organizations.

37 (c) The department, in consultation with the board, shall prepare
38 and adopt guidelines for the awarding and administration of grants
39 awarded from the fund.

(d) The revenue from the Brake Friction Materials Water Pollution Fund allocated for the purposes stated in paragraphs (2) and (3) of subdivision (b) shall not be expended on activities unrelated to the improvement of water quality in surface waters that receive runoff containing pollutants from vehicle brake friction materials, consistent with *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866.

(e) The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts, and any amounts paid into or from the fund, are subject to an annual audit by an auditing firm selected by the department. The annual audit shall be posted on the department's Internet Web site. The auditing firm or the department shall also conduct a selective audit of entities making payments to, or receiving payments from, the board to determine whether payments required by Section 25250.64 are being paid to the department on all new axle friction materials sets sold in California, and that grants are being paid out properly by the department.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.